

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

KARL DEE KAY

Plaintiff,

vs.

MIKE WHITAKER, *et. al.*,

Defendants.

**MEMORANDUM DECISION
REPORT & RECOMMENDATION**

Case No: 2:07 CV 00035 TC

District Judge Tena Campbell

Magistrate Judge David Nuffer

Karl Dee Kay, who is currently an incarcerated inmate at the Utah State Prison, filed a pro se complaint against Mike Whitaker, *et. al.* for employment discrimination under the Civil Rights Act of 1964, [42 U.S.C. § 2000e](#), *et. seq.*¹ Mr. Kay alleges that the Defendants violated his civil rights and committed employment discrimination by terminating him from his job because of his prior conviction as a sex offender.² Mike Whitaker, *et. al.*, through its counsel, Babcock Scott & Babcock, filed a [Fed. R. Civ. P. 12\(b\)\(6\)](#) motion to dismiss for failure to state a claim.³ After reviewing Mr. Kay's complaint, the court concludes that it should be dismissed because Mr. Kay's prior conviction as a sex offender does not place him into a protected class, and thus

¹Docket no. 16 at 1-2, filed May 9, 2007.

²*Id.* at 1, 3.

³Docket no. 19, filed May 25, 2007.

Mr. Kay is not eligible to make an unlawful discharge claim under [42 U.S.C. § 2000e-2\(a\)\(1\)](#).⁴

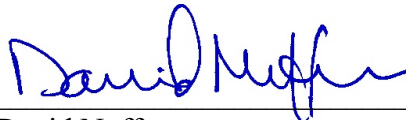
RECOMMENDATION

Given that Mr. Kay does not allege that the Defendant(s) discharged him on the basis of his race, color, religion, sex, or national origin, the court concludes that Defendant's motion to dismiss should be **GRANTED**, and the complaint dismissed for failure to state a claim.

Copies of this Report and Recommendation are being mailed to the parties, who are hereby notified that they have the right to object to the Report and Recommendation. The parties are further notified that they must file any objections to the Report and Recommendation with the clerk of the district court, pursuant to [28 U.S.C. § 636\(b\)](#), within ten (10) days after receiving it. Failure to file objections may constitute a waiver of the objections on subsequent appellate review.

September 23, 2007.

BY THE COURT:



David Nuffer
U.S. Magistrate Judge

⁴[42 U.S.C. § 2000e-2](#). Unlawful employment practices

(a) Employer practices. It shall be an unlawful employment practice for an employer--

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.